

SEP 16 1955

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States**OCTOBER TERM 1955**

No. 312

BLAZEY CZAPLACKI,*Petitioner,*

against

**THE S/S HOEGH SILVERCLOUD, her boilers, engines, tackle,
apparel and furniture,****OIVIND LORENTZEN, as Director of Shipping and Curator of
the Royal Norwegian Government, doing business under
the name and style of The Norwegian Shipping and Trade
Mission, KERR STEAMSHIP COMPANY, INC., and HAMILTON
MARINE CONTRACTING COMPANY, INC.,***Respondents.*

**BRIEF AND APPENDIX OF RESPONDENTS S/S
HOEGH SILVERCLOUD, OIVIND LORENTZEN,
ETC., AND KERR STEAMSHIP COMPANY, INC..
IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT**

JAMES M. ESTABROOK,*Counsel for Respondents,***The S/S Hoegh Silvercloud,
Oivind Lorentzen and Kerr
Steamship Company, Inc.****FRANCIS X. BYRN,***On the Brief.*

INDEX

	PAGE
Opinions of the Court Below	1
Jurisdiction	2
Questions Presented	3
Statutes Involved	3
Statement	4

ARGUMENT:

1. This Court has no jurisdiction to review the compensation order or award	7
2. Petitioner has no standing in this Court or any Court to sue for personal injuries as his cause of action was assigned to his employer by the compensation order of September 28, 1945	8
3. Neither the lower courts nor this Court has any power to rule on questions adversely affecting persons not parties to this suit	9
4. Petitioner's laches has prevented him from obtaining any of the relief he seeks	10
5. There is nothing, no justification in the opinions below, in case law, the Longshoremen's Act or any practical administration thereof for the broad relief petitioner seeks	11
6. Characteristics of an award	14

CONCLUSION	14
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APPENDIX:

Libelant's Exhibit 2—Compensation award of United States Employees' Compensation Commission dated September 28, 1945	1a
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Respondent Hamilton's Exhibit A—Memorandum dated September 28, 1945	4a
Letter of September 25, 1945, from Claims Examiner O'Keefe to Petitioner	5a

TABLE OF CASES CITED

American Stevedores v. Porello, 330 U. S. 446	13
Associated Indemnity Corporation v. Marshall, 71 F. (2d) 235 (9th Cir.)	8, 12
Bassett v. Massman Construction Co., 120 F. (2d) 230	8
Crowell v. Benson, 285 U. S. 22	8
Hagens v. United Fruit Co., 135 F. (2d) 842	8
Mille v. McManigal, 69 F. (2d) 644	8
Shugard v. Hoage, 89 F. (2d) 796 (Ct. of Appeals, Dist. of Columbia)	8, 12

STATUTE CITED

Title 33 U. S. C.:

Section 919	3, 14
Section 921	10
Section 921 (a)	2, 3, 6, 7
Section 921 (b)	2, 3, 6, 7, 12
Section 921 (d)	2, 3, 6
Section 933 (b)	2, 3, 6, 9
Section 933 (i)	9

IN THE
Supreme Court of the United States

OCTOBER TERM 1955

No. 342

BLAZEY CZAPLICKI,

Petitioner,

against

THE S/S HOEGH SILVERCLOUD, her boilers, engines, tackle,
apparel and furniture,

OIVIND LORENTZEN, as Director of Shipping and Curator of
the Royal Norwegian Government, doing business under
the name and style of The Norwegian Shipping and Trade
Mission, KERR STEAMSHIP COMPANY, INC., and HAMILTON
MARINE CONTRACTING COMPANY, INC.,

Respondents.

**BRIEF OF RESPONDENTS S/S HOEGH SILVER-
CLOUD, OIVIND LORENTZEN, ETC., AND KERR
STEAMSHIP COMPANY, INC., IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT**

Opinions of the Court Below

The petition sets forth the citations of the various
opinions but does not include the citation of the opinion of
the Court of Appeals for the Second Circuit which is 222
F. 2d 189, and this is reported unofficially, 1955 A. M. C.
1192.

Jurisdiction

1. In so far as the petition purports to attack a compensation award made September 28, 1945, by Louis G. Schwartz, Deputy Commissioner of the Second Compensation District, of the United States Employees' Compensation Commission (Appendix, p. 1a), neither the District Court nor the Court of Appeals nor this Court has any jurisdiction over this matter because of the specific and exclusive provisions for review found in Title 33, U. S. C. Sec. 921, subdivisions (a), (b) and (d).

2. If the petition does not purport to attack the award of September 28, 1945, then petitioner has no standing in this Court, because under Title 33, U. S. C. Sec. 933(b), any cause of action petitioner might have had for personal injuries against respondents was assigned to his employer as of September 28, 1945, and, consequently, petitioner is legally incapable of bringing this present action, and both the District Court and the Court of Appeals have so held.

3. In part the relief petitioner has sought seeks to make petitioner's employer, the Northern Dock Company, and/or petitioner's employer's underwriter, The Travelers Insurance Company, a trustee to prosecute this action in his behalf, and also seeks, in the alternative, that the cause of action be re-assigned to him. Neither the Northern Dock Company nor The Travelers Insurance Company are a party to this action, and there is a serious jurisdictional question as to what affirmative relief might be granted by this Court, or any Court, by way of mandatory injunction or imposition of a trust on a party not sued for that relief.

All these questions must be resolved favorably to petitioner before petitioner's first question presented for review is reached.

Questions Presented

1. Whether this Court has jurisdiction to review a compensation order or award where the exclusive statutory provisions for review both as to time, venue and parties sued, have not been followed.

2. Whether petitioner has any standing in this Court where his cause of action was assigned to his employer.

3. Whether this Court can give petitioner relief as against persons not parties to this action.

4. Whether petitioner's laches has not precluded him from obtaining any of the relief he seeks.

5. Whether or not, under petitioner's Questions Two and Three, relief can be afforded either under the Longshoremen's Compensation Act or apart from it.

6. Whether, under petitioner's Fourth Question presented for review, petitioner is not adequately answered by the opinion of the Court of Appeals and the language of the Longshoremen's Act, particularly Title 33 U. S. C., Section 919, cited in the petition.

Statutes Involved

The provisions of Title 33, U. S. C. 933 (b) and 33 U. S. C. 919 are set forth in the petition. Title 33 U. S. C. 921 (a), (b) and (d) are set forth herein.

"Sec. 921. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order

are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). * * *

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18."

Statement

Petitioner, a longshoreman, filed a libel in admiralty on June 12, 1952 to recover damages for personal injuries allegedly sustained on September 6, 1945 while working aboard the s/s Hoegh Silvercloud at Pier 3, Hoboken, New Jersey. His employer was Northern Dock Company. It is claimed that petitioner fell down a catwalk on the deck of the s/s Hoegh Silvercloud, which was erected by respondent, Hamilton Marine Contracting Co., Inc. At the time of the accident, the vessel was owned by Oivind Lorentzen, as Director of Shipping and Curator of the Royal Norwegian Government doing business under the name and style of The Norwegian Shipping and Trade Mission. Kerry Steamship Co., Inc. acted as agents for the vessel at that time. Hamilton Marine Contracting Co., Inc. was engaged to do certain carpenter work aboard the vessel.

Following the accident, petitioner's employer, Northern Dock Company, filed a report of accident at the Compensation Commission, September 6, 1945 (Libelant's Exhibit

3). Subsequently, The Travelers Insurance Company, the compensation carrier for petitioner's employer, filed a notice with the Commission dated September 13, 1945 that the claim of petitioner would be controverted (Libelant's Exhibit 4). According to respondent Hamilton's Exhibit A in evidence, which was a memorandum prepared by Mr. D. B. O'Keefe, claims examiner, petitioner called at the Commission on September 27, 1945 and the provisions of Section 33b of the Longshoremen's Act were explained to him (Appendix, p. 4a). According to the memo, petitioner stated definitely that he desired to receive his compensation, and to waive any rights to the third-party action, and that he did not desire to consult an attorney in the matter. The memo further said that petitioner filed a claim for compensation and a formal order would be issued accordingly. Libelant's Exhibit 1, dated September 27, 1945, shows that a claim for compensation was filed by petitioner. Libelant's Exhibit 2 is the Compensation Award issued on September 28, 1945 by Deputy Commissioner Louis G. Schwartz (Appendix, p. 1a). Said exhibit also shows that said award was sent by registered mail to all parties on September 28, 1945. The award provided that petitioner receive compensation for two weeks at \$22.50 per week for temporary total disability from September 14, 1945 to September 27, 1945 inclusive, and thereafter until disability ceased. Under the award petitioner received compensation for 7 weeks and 1 day or a total of \$160.72.

On April 30, 1946 petitioner commenced a third-party suit against respondent, Kerr Steamship Company, Inc., in New Jersey in the Hudson County Court of Common Pleas to recover damages for his injuries. The suit was dismissed on November 22, 1946 for improper service of process on Kerr Steamship Co., Inc. A second suit was commenced at a later date but petitioner has asserted it was both commenced and discontinued without his consent. The discontinuance was dated November 26, 1947. Nothing further happened until June 12, 1952, when the present suit